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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 IN RE: MIDLAND CREDIT
12 MANAGEMENT, INC., TELEPHONE
13 CONSUMER PROTECTION ACT
14 LITIGATION

Case No. 11-md-2286-MMA (MDD)

Member Case No. 15-cv-1712-MMA
(MDD)

15 **ORDER OVERRULING PLAINTIFF**
16 **ARORA’S OBJECTION TO**
17 **MAGISTRATE JUDGE’S**
18 **NONDISPOSITIVE ORDER**

19 [Doc. No. 748]
20

21 Plaintiff Ashok Arora (“Arora”), proceeding pro se, objects to the Magistrate
22 Judge’s “Order Re: Joint Motion for Determination of Dispute” (“Order”) (Doc. No. 742)
23 pursuant to Federal Rule of Civil Procedure 72(a). *See* Doc. No. 748. Defendants filed
24 an opposition to Arora’s objection, and Arora replied. *See* Doc. Nos. 755, 760. For the
25 reasons set forth below, the Court **OVERRULES** Arora’s objection.

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I. BACKGROUND

On September 5, 2018, the Magistrate Judge issued an order outlining a unique means for the parties to conduct discovery in this multidistrict litigation (MDL).¹ *See* Doc. No. 608. On December 26, 2019, the parties filed a “Joint Motion for Determination of Discovery Dispute.” *See* Doc. No. 736. The parties’ motion addressed three disputes: (1) “Plaintiff contends that the list of calls produced by Defendant should include the time of day of each call”; (2) “Plaintiff contends that Defendant shall produce Account notes or other records relating to the identified account(s)”; and (3) “Plaintiff contends that Defendant shall produce any evidence regarding consent possessed by Defendants.” *Id.* at 5, 8, 12.

The Magistrate Judge issued a brief but thorough ruling on the joint motion on January 6, 2020:

Plaintiff Ashok Arora (“Arora”) in member case number 15cv1712-MMA-MDD moved to compel Midland to supplement certain discovery responses relating to Plaintiff-specific information. (ECF No. 736). Pursuant to this Court’s September 5, 2018 Order, Midland was required to produce certain “Plaintiff-specific information,” including a list of calls made to Arora on the accounts identified to cellular telephone numbers identified by Arora, account notes or other records relating to Arora’s account, and any consent evidence currently in Midland’s possession. (ECF No. 608 at 4). Arora contends that Midland’s production of such information was insufficient.

First, Arora avers that the list of calls produced by Defendant should include the time of day of each call. Midland argues the time of day of each call is irrelevant in this TCPA action. On August 10, 2018, the parties filed a Joint Motion for Order Implementing the Plaintiff Questionnaire and

¹ For example, the discovery order set forth the following: “The responses to the Plaintiff Questionnaire shall be treated as answers to interrogatories under Fed. R. Civ. P. 33 and responses to requests for production of documents under Fed. R. Civ. P. 34 and shall be subject to the supplementation requirements of Fed. R. Civ. P. 26.” Doc. No. 608 at 2. The discovery order also provided a means for Defendants to produce plaintiff-specific information. *See id.* at 4; *see also infra*.

1 Protective Order and Providing for Limited Preliminary Discovery. (ECF
2 No. 603). On August 15, 2018, the Court ordered that any Plaintiff with
3 objections to the implementation of the Questionnaire was required to file
4 objections no later than August 27, 2018. (ECF No. 604). No objections
5 were filed and the Court implemented the Plaintiff Questionnaire and the
6 production of plaintiff-specific information, which does not require Midland
7 to list the time of day of each call. (ECF No. 608). Arora could have
8 objected to the questionnaire and Midland's proposed productions on the
9 grounds that it would not require Midland to provide the time of day each
10 call was made. The failure to object waives this argument.

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12 Second, Arora contends Midland must produce account notes or other
13 records relating to the account Midland called Arora about. Arora
14 acknowledges that any account notes it has do not pertain to Arora because
15 the calls to his telephone number were wrong-number calls. However,
16 Arora still asserts he is entitled to those account notes because they are
17 protected by the Protective Order in this case. Midland counters that the
18 account notes are not relevant to Arora's case. The Court agrees with
19 Midland. Arora is not entitled to a third party's confidential information,
20 even with the Protective Order because they are not relevant.

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22 Midland has told Arora that it has produced all of the documents
23 required by the Court's September 5, 2018 Order [Doc. No. 608]. The
24 Court's September 5, 2018 Order is unique to this Multi-District Litigation
25 ("MDL") and is a method of obtaining discovery relevant to this MDL
26 without requests for production of documents and interrogatories. Thus,
27 Midland was not required to object or state that they do not have other
28 records relating to Arora's number. Midland's statement that it has
produced all of the document required by the Court's order is sufficient.

21 Third, Arora moves to compel evidence regarding consent possessed
22 by Midland. According to Arora, Midland has neither stated that they do not
23 possess any consent evidence nor objected to this request. As indicated
24 previously, Midland was neither required to object nor state that they do not
25 have any consent evidence and Midland's response that it produced all
26 documents required by the Court's order is adequate.

26 Based on the foregoing, the Court **DENIES** Arora's motion to compel
27 as presented in this Joint Motion.
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1 Doc. No. 742 (footnotes omitted).

2 Subsequent to the Magistrate Judge issuing the Order, Arora filed the present
3 objection on January 21, 2020. *See* Doc. No. 748.

4 **II. LEGAL STANDARD**

5 A district judge's review of a magistrate judge's order on a nondispositive matter is
6 limited.

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8 When a pretrial matter not dispositive of a party's claim or defense is
9 referred to a magistrate judge to hear and decide, the magistrate judge must
10 promptly conduct the required proceedings and, when appropriate, issue a
11 written order stating the decision. A party may serve and file objections to
12 the order within 14 days after being served with a copy. A party may not
13 assign as error a defect in the order not timely objected to. The district judge
14 in the case must consider timely objections and modify or set aside any part
15 of the order that is clearly erroneous or is contrary to law.

16 Fed. R. Civ. P. 72(a); *see also* 28 U.S.C. § 636(b)(1)(A) ("A judge of the court may
17 reconsider any pretrial matter under this subparagraph (A) where it has been shown that
18 the magistrate judge's order is clearly erroneous or contrary to law."); *Grimes v. City &*
19 *Cty. of San Francisco*, 951 F.2d 236, 240 (9th Cir. 1991) ("The district court shall defer
20 to the magistrate's orders unless they are clearly erroneous or contrary to law.").

21 The "clearly erroneous" prong "applies to factual findings and discretionary
22 decisions made in connection with non-dispositive pretrial discovery matters." *F.D.I.C.*
23 *v. Fid. & Deposit Co. of Maryland*, 196 F.R.D. 375, 378 (S.D. Cal. 2000) (first citing
24 *Computer Econ., Inc. v. Gartner Grp., Inc.*, 50 F. Supp. 2d 980, 983 (S.D. Cal. 1999);
25 and then citing *Joiner v. Hercules, Inc.*, 169 F.R.D. 695, 697 (S.D. Ga. 1996)) ("[T]he
26 district court can overturn the magistrate judge's ruling only if the district court is left
27 with the definite and firm conviction that a mistake has been made."). Under Rule 72(a),
28 the reviewing district judge may not simply supplant his or her own judgment in place of

1 the deciding magistrate judge. *Grimes*, 951 F.2d at 241 (citing *United States v. BNS Inc.*,
2 858 F.2d 456, 464 (9th Cir. 1988)).

3 However, the “contrary to law” prong “permits independent review of purely legal
4 determinations by the magistrate judge.” *Fid. & Deposit Co. of Maryland*, 196 F.R.D. at
5 378 (first citing *Computer Econ., Inc.*, 50 F. Supp. 2d at 983; and then citing *Haines v.*
6 *Liggett Grp. Inc.*, 975 F.2d 81, 91 (3d Cir. 1992)).

7 An order regarding a discovery dispute is generally a nondispositive matter. *See*
8 28 U.S.C. § 636(b)(1)(A); Civ. Loc. R. 72.1(b); *Grimes*, 951 F.2d at 240; *Fid. & Deposit*
9 *Co. of Maryland*, 196 F.R.D. at 378.

10 **III. DISCUSSION**

11 Arora makes six objections that essentially challenge the Magistrate Judge’s ruling
12 as to (1) call times and (2) account notes and other records. As to the call times, Arora
13 objects for several reasons: “the Discovery Order did not state that the Rule 34 of Fed. R.
14 Civ. P. was being waived for Defendants”; the call times are relevant; and he was pressed
15 for time and thus could not seek clarification on or file objections to the Plaintiff
16 Questionnaire. Doc. No 748 at 3–4. As to the account notes and other records, Arora
17 claims that “while the account notes may not pertain to him in their entirety, parts of the
18 account notes do pertain to him or calls to his cell phone.” *Id.* at 6. Arora argues that the
19 notes are relevant, and Defendant’s privacy arguments are without merit. *See id.* at 8, 9.

20 In opposition, Defendants argue that the Magistrate Judge’s ruling was correct.
21 Doc. No. 755 at 5. They point to the high bar required to challenge a magistrate judge’s
22 nondispositive motion. *See id.* Defendants argue that Arora waived his call time
23 objection because he failed to timely object; the call list produced by Defendants did not
24 need to be produced as it was kept in the ordinary course of business; “the call times are
25 irrelevant because the TCPA does not regulate the timing of non-marketing calls”;
26 “verification purposes” is not a proper reason to request the call times because Arora does
27 not identify why the call times would be relevant or the basis for why the call list would
28 be falsified; and Arora’s speculation that Defendants produced call times to other

1 plaintiffs is incorrect because the produced list was in the same format as was produced
2 to “every member-case plaintiff who submitted a questionnaire and signed on to the
3 protective order.” *Id.* at 5–7. As to the third-party account notes, Defendants argue that
4 third-party account notes of Elizabeth Adams are not required to be produced because she
5 is not a plaintiff in this MDL and production would infringe upon her right to privacy.
6 *Id.* at 8. In response to Arora’s suggestion that the notes are relevant to revoked consent,
7 Defendants reply:

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9 Arora does not contend that he revoked his consent—he contends he never
10 consented in the first place. Arora also now claims for the first time that he
11 informed Midland that it had reached a wrong number and he speculates that
12 the Elizabeth Adams’ account notes might contain information about that
13 alleged interaction. This alleged interaction was never mentioned in his
14 original motion, however, and seems like a last-ditch attempt to invent an
15 excuse to discover Ms. Adams’ personal information.

16 *Id.* at 8. Defendants emphasize that “Arora has not explained how consent by him could
17 be proven or disproven using someone else’s account notes.” *Id.* at 9. Finally,
18 Defendants argue that agreeing to produce account notes to member plaintiffs who were
19 called regarding their own debts was not an admission that the notes are relevant in all
20 cases or in wrong number cases. *Id.*

21 As to the call times, the Court finds that Arora has not carried his burden to show
22 that the Magistrate Judge’s ruling “is clearly erroneous or is contrary to law.” Fed. R.
23 Civ. P. 72(a). If Arora had an issue with the proposed Plaintiff Questionnaire, he could
24 have objected and sought modification. However, Arora failed to do so. Arora believes
25 there was not enough time for him to seek clarification on or file objections to the
26 Plaintiff Questionnaire. *See* Doc. No. 748 at 4. As Defendants correctly argue, Arora
27 could have requested an extension to file objections, but he failed to do so. *See* Doc. No.
28 755 at 6. The Magistrate Judge correctly noted that Arora’s failure to object to the
Plaintiff Questionnaire waives his current argument. *See* Doc. No. 742 at 2.

1 Additionally, the Plaintiff Questionnaire Order called for Defendant’s production of
2 “Plaintiff-Specific Information,” which included “a list of calls made to the plaintiff, if
3 any, on the accounts identified in the questionnaire to cellular telephone numbers
4 identified in the questionnaire.” Doc. No. 608 at 4. Defendants’ duty to produce a “list
5 of calls” did not require Defendants to list the time of day for each call. Arora has not
6 left the Court with the definite and firm conviction that the Magistrate Judge made a
7 mistake. *See Deposit Co. of Maryland*, 196 F.R.D. at 378.

8 Similarly, as to the account notes and related records, the Court finds that Arora
9 has not carried his burden to show that the Magistrate Judge’s ruling “is clearly erroneous
10 or is contrary to law.” Fed. R. Civ. P. 72(a). “Plaintiff-Specific Information” requiring
11 production includes “account notes or other records relating to the plaintiff’s account, if
12 any.” Doc. No. 608 at 4. The third-party’s account notes do not relate to a plaintiff’s
13 account and thus fall outside of “Plaintiff-Specific Information” where the account notes
14 pertain to wrong-number calls, which Defendants concede, *see* Doc. No. 755 at 8. The
15 Court finds that the Magistrate Judge’s Order regarding the account records of the third-
16 party was not clearly erroneous when it balanced the privacy considerations against the
17 relevance and need of the sought information. Arora has failed to show how the
18 Magistrate Judge made a definite mistake—as to both its relevancy and privacy
19 determinations. This Court cannot simply supplant the Magistrate Judge’s judgment for
20 its own in the present case. *See Grimes*, 951 F.2d at 241 (citing *BNS Inc.*, 858 F.2d at
21 464). Because Arora has not carried its burden to show that the Magistrate Judge’s ruling
22 was clearly erroneous, his objection is unavailing.

23 To the extent that Arora’s objections address evidence regarding consent, the Court
24 finds that the Magistrate Judge’s ruling was not clearly erroneous. Despite Arora seeking
25 “any evidence regarding consent possessed by Defendants,” Defendants replied that
26 “they have produced all of the documents required by the Questionnaire Order, including
27 any consent evidence in their possession.” Doc. No. 736 at 12, 13. The Court agrees
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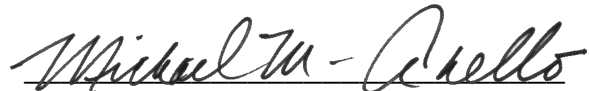
1 with the Magistrate Judge that Defendant's response that it produced all documents
2 required by the order was adequate.

3 **IV. CONCLUSION**

4 Based on the foregoing, the Court **OVERRULES** Arora's objection.

5 **IT IS SO ORDERED.**

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7 Dated: March 2, 2020

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9 Hon. Michael M. Anello

10 United States District Judge
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